

REMARKS

Applicant respectfully requests entry and consideration of the above amendments even though presented after a final rejection. Applicant submits that the amendments do not raise new issues or require a new search. Further, entry and consideration of the amendments may isolate issues for potential allowance or appeal. The amendments were not presented earlier in the prosecution due to a better understanding of the Examiner's position as reflected in the latest Office Action.

Summary

Claims 1-16 and 18 stand in this application. Claims 17 and 19-26 have been canceled without prejudice. Claim 1 has been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claim 1 in order to facilitate prosecution on the merits. Applicant submits that the amendment merely clarifies, either expressly or impliedly, what was already present in the claims.

35 U.S.C. § 103

At page 2, paragraph 4 of the Office Action claims 1-5, 7-10 and 12-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,600,824 to Matsuo ("Matsuo") in view of US Patent Application Number 2002/0097885 to Birchfield et al.

("Birchfield"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-5, 7-10 and 12-16. Therefore claims 1-5, 7-10 and 12-16 define over Matsuo and Birchfield whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

at least one reflector having an acoustically reflective surface structured and arranged to reflect the acoustic waves in a direction of the first microphone and the second microphone

As correctly noted in the Office Action, Matsuo fails to disclose at least one acoustically reflective surface to reflect acoustic waves. According to the Office Action, the missing language is disclosed by Birchfield. The Office Action alleges on page 3 that:

Birchfield teaches that in some applications it is desirable to determine the direction of a human speaker. A human has ears, and the ears read on at least one acoustically reflective surface having an irregular shape; the ear implicitly reflects in both directions.

Applicant respectfully disagrees. Birchfield, arguably, teaches an acoustic source location technique that compares the time response of signals from two or more pairs of microphones. By way of contrast, the claimed subject matter teaches “at least one reflector having an acoustically reflective surface structured and arranged to reflect the acoustic waves in a direction of the first microphone and the second microphone.”

The Office Action alleges that it would have been obvious to have the human ear be the acoustically reflective surface in order to better determine the position of an individual who is talking. Applicant respectfully submits that a human ear is clearly different than an “at least one reflector having an acoustically reflective surface structured and arranged to reflect the acoustic waves in a direction of the first microphone and the second microphone.” Therefore, Birchfield fails to disclose, teach or suggest the missing language. Consequently, Matsuo and Birchfield, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claims 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claim 1 is respectfully requested. Claims 2-5 also are non-obvious and patentable over Matsuo and Birchfield,

taken alone or in combination, at least on the basis of their dependency from claim 1.

Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Claims 7 and 12 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 7 and 12 are not obvious and are patentable over Matsuo and Birchfield, taken alone or in combination, for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 7 and 12. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 8-10 and 13-16 that depend from claim 7 and 12 respectively, and therefore contain additional features that further distinguish these claims from Matsuo and Birchfield.

At page 8, paragraph 5 of the Office Action claims 6, 11 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsuo in view of Birchfield and further in view of US 5,058,419 to Nordstrom et al. ("Nordstrom"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

As recited above, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Applicant respectfully submits that claim 6 depends from claim 1, claim 11 depends from claim 7 and claim 18 depends from claim 12. As recited above, Matsuo and Birchfield, taken alone or in combination, fail to teach, suggest or disclose every element of independent claims 1, 7 and 12. Applicant respectfully submits that Nordstrom fails to

remedy the deficiencies of Matsuo and Birchfield discussed above. Therefore, claims 6, 11 and 18 also are non-obvious and patentable over Matsuo, Birchfield and Nordstrom, taken alone or in combination, at least on the basis of their dependency from claims 1, 7 and 12 respectively. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

For at least the reasons given above, claims 1-16 and 18 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 1-16 and 18 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.


Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-16 and 18 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC

A handwritten signature in black ink, appearing to read 'John F. Kacvinsky', with a long horizontal flourish extending to the right.

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

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